

§ 266.9

49 CFR Ch. II (10–1–06 Edition)

(ii) During the period February 5, 1976, through December 31, 1978, the Commission has found that the public convenience and necessity would require or permit abandonment or discontinuance of rail service on the line related to the project irrespective of when the application was filed;

(3) The line related to the project is listed for possible inclusion in a rail bank in Part III, Section C of the Final System Plan; or

(4) The line related to the project was eligible to be acquired under section 402(c)(3) of the Rail Act (45 U.S.C. 762(c)(3)).

(c) Projects eligible under paragraphs (b)(2), (b)(3), and (b)(4), of this section are eligible only until September 30, 1981. Projects initially eligible under paragraph (b)(2) of this section, may subsequently become eligible under paragraph (b)(1) of this section, if the Commission issues a new certificate of public convenience and necessity with respect to the line related to the project.

§ 266.9 Federal/State share.

(a) *Federal share.* The Federal share of allowable costs under the Rail Service Assistance Program is 80 percent, with the exception that the Federal share of payments to be covered by rail service continuation assistance shall be 70 percent for any third twelve month period which begins on or after October 1, 1980 that such assistance is provided.

(b) *State share-general.* The State share of allowable costs under the Rail Service Assistance Program shall be provided either in cash or through eligible in-kind benefits which would not otherwise have been provided. When more than the required State share is provided during the Federal fiscal year beginning October 1, 1978, or thereafter, the amount in excess of the required State share may be carried forward to subsequent fiscal years. The State share of allowable costs under the Rail Service Assistance Program may not be satisfied directly or indirectly by any Federal funds unless the funds are provided through a Federal program which specifically authorizes the use of such funds to satisfy the non-Federal

share of a Federally subsidized program.

(c) *In-kind benefits—(1) Eligible types of benefits and their valuation.* The following types of in-kind benefits are eligible when they are provided for projects eligible under § 266.7 of this part (whether or not Federal assistance is requested for the projects) or they are activities which would be eligible for planning and program operation assistance. Eligible in-kind benefits are valued as follows:

(i) The value of forgiven taxes, such as those portions of gross receipts or revenue taxes which are applicable to an approved project or property taxes on project related property, shall be the amount which would otherwise have been levied by the taxing authority. Forgiveness may be through exemption or remission;

(ii) The value of trackage rights secured by a State for a common carrier shall be the amount paid by railroads for comparable rights on comparable rail freight properties;

(iii) The value of State salaries for State public employees working in the State Rail Service Assistance Program, shall be consistent with rates paid for similar work by state public employees working in comparable state programs but shall not include overhead or general administrative costs;

(iv) The value of donations by the State or by a third party on behalf of the State of real property or tangible personal property of the kind necessary for safe and efficient operation of rail freight service, such as State or locally owned or leased buildings used in rail freight operations or equipment or materials, shall be determined as follows:

(A) The value of State tangible personal property shall be established at the State's actual cost in accordance with Federal Management Circular 74-4;

(B) The value of donated tangible personal property shall be determined in accordance with Attachment F of Office of Management and Budget Circular (OMB) A-102;

(C) The value of State real property shall be established at the State's actual cost in accordance with Federal Management Circular 74-4, if at least one independent appraisal based on the

results of a title search was performed when the property was purchased by the State, otherwise it shall be valued at the fair market value as established by at least one independent appraisal based on the results of a title search at the time the state proposes to make the property available as in-kind benefit; and

(D) The value of donated real property shall be its fair market value, at the time of donation to the State, as established by at least one independent appraisal based on the results of a title search;

(2) *Eligibility criteria.* To be applied toward the State share, in-kind benefits must:

(i) Be verifiable from the State's records;

(ii) Be necessary and reasonable for proper and efficient accomplishment of the objectives of the Rail Service Assistance Program;

(iii) Be provided for in the approved grant budget; and

(iv) Be approved under paragraph (3) of this paragraph (c).

(v) The State shall submit such information as the Administrator may request to verify the value of in-kind benefits.

(3) *Request for approval.* A request for approval of the in-kind benefits are to be applied and shall include the following:

(i) Full name and principal business address of the contributor if other than grantee;

(ii) Detailed documentation of the in-kind benefits including identification of the kind of in-kind benefits to be provided as well as their estimated value. When in-kind benefits are to be provided by a third party, a copy of the executed agreement between the State and the third party; and

(iii) Certification by the State that the contribution will be used solely for the purposes documented.

§ 266.11 Allowable costs.

Allowable costs include only the following costs which are properly allocable to the work performed: Planning and program operation costs which are allowed under Federal Management Circular 74-4; and costs of projects eligible under § 266.7 of this part. All al-

lowable costs shall be authorized by a fully executed grant agreement. A State may incur costs prior to the execution of a grant agreement only if the Administrator, based on the State's demonstration of a compelling need to incur costs prior to the execution of a grant agreement, has authorized the costs in writing prior to their incurrence by the State.

§ 266.13 Distribution of funds.

(a) *Formula.* Funds appropriated for or reallocated in any fiscal year (in this section referred to jointly as "funds") are to be distributed to each State as follows:

(1) Two-thirds of the funds will be allocated in the ratio which a State's rail mileage that, in accordance with 49 U.S.C. 10904(d), is either potentially subject to abandonment or is to become the subject of an application for a certificate of abandonment or discontinuance which a carrier plans to submit, but has not yet submitted, bears to the total such rail mileage in all the States;

(2) One-third of the funds will be allocated in the ratio which a State's rail mileage for which the Commission has found within three years prior to the first day of the fiscal year for which the funds are being allocated that the public convenience and necessity permits the abandonment, or the discontinuance, of rail service on such rail mileage, bears to the total such rail mileage in all the States. Until September 30, 1981, such rail mileage includes the rail mileage which was eligible under the Rail Service Assistance Program pursuant to section 402 of the Rail Act, and all rail mileage which, prior to October 1, 1978, had been included for formula allocation purposes. The Administrator will calculate rail mileage under this paragraph as of October 1 of each year; and

(3) The above calculations will be adjusted if necessary so that no State receives less than 1 percent of the funds appropriated for a fiscal year.

(b) *Reallocation.* The Administrator will reallocate among the States funds which have not been granted under an executed grant agreement by the end of the fiscal year for which the funds were appropriated and funds determined by